IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2937 of 2005
Date of Decision: 30.10.2006

Ajaib Singh ...Petitioner

Versus

Amarjit Kaur and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Manu Bhandari, Advocate, for the petitioner.

JUDGMENT

The challenge in the present revision petition is to the order passed by the learned Executing Court on 10.1.2005, whereby the application filed by the petitioner under Order 21 Rule 16 CPC, was declined.

A decree for possession of land measuring 79 kanals 15 marlas was passed in favour of Puran Singh, Smt. Bhayian and Smt. Nihal Kaur, on 24.9.1992. The said Puran, Smt. Bhaiyan and Smt. Nihal Kaur, as legal heirs of Sohan Singh, had share in the land measuring 543 kanals 15 marlas along with Jarnail Singh, except Khasra No. 56/18, which came to the share of Bimla daughter of Sohan Singh, by virtue of a decree dated 9.6.1977. After the death of Puran Singh, his wife Harbans Kaur, executed sale deed dated 3.2.1998 in respect of the land measuring 68 kanals in favour of the petitioner and another sale deed dated 4.6.1998 in respect of the land measuring 39 kanals 4 marlas. The said Harbans Kaur, along with Bhayian and Nihal Kaur, have sought execution of the decree dated 24.9.1992, and during the pendency of the said execution, the present petitioner moved an application on 15.11.2003 to become a party in the execution as assignee of Harbans Kaur. The said application has been declined by the learned

Executing Court on the ground that such application suffers from delay and that it has not come on record that as to how Harbans Kaur could execute a sale deed in respect of the land measuring 39 kanals 4 marlas. It has further been found that the petitioner is not representative of the decree holder and, therefore, the provisions of Order 21 Rule 16 CPC are not applicable in the present case.

After hearing learned counsel for the petitioner, I am of the opinion that the order passed by the learned trial Court, is not sustainable in law. The petitioner is claiming interest in the property as a successor of Harbans Kaur on the basis of two sale deeds dated 3.2.1998 and 4.6.1998. If the said sale deeds are proved to be executed, the petitioner as an assignee of the decree holder would be entitled to seek execution of the decree as co owner along with other decree holders, namely, Smt. Bhayian and Smt. Nihal Kaur. The inter-se share of the decree holders is not subject matter of the present execution and, therefore, the finding recorded by the learned Executing Court that share of Harbans Kaur is 1/3rd of 79 kanals 15 marlas, may not be relevant for determining the share of Harbans Kaur in the total holding of Sohan Singh, inherited by her through Puran Singh.

Thus, the order passed by the learned Executing Court dated 10.1.2005 is set aside. The petitioner is permitted to be impleaded as decree holder being assignee of Harbans Kaur. However, it is clarified that inter-se question of possession amongst the co-decree holders in respect of land measuring 79 kanals 15 marlas, if necessity so arises, may be adjudicated upon in appropriate separate proceedings.

30-10-2006 (HEMANT GUPTA)
ds JUDGE